IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3159 OF 2007

Indian Oil Corporation Ltd. ...Petitioners

Versus

Shri Sanjay Dattu Tarte ...Respondent.

Mr. Narendra Walawalkar, Advocate with Mr. Chirag Modi i/b. RMG Laws Associates, Adocates for the petitioners.
Mr. S.M.Railkar, Advocate, for Respondent.

CORAM: J.H.BHATIA,J.

DATE : 14th September, 2007.

P.C.

1. Heard learned Counsel for both parties.

2. The respondent is the original plaintiff and the petitioner is the defendant. Admittedly, the plaintiff was granted dealership of Indian Oil regarding a retail outlet as per the agreement dated 3.4.2003. According to the defendant-petitioner, the plaintiff had committed

breach of the contract and, therefore, it cancelled the dealership agreement and stopped the supplies. Against that a suit was filed by the plaintiff. However, on behalf of the defendant, an application was made to refer the matter to arbitrator on the ground that as per clause 67 of the Dealership Agreement, any dispute between the parties shall be referred to the sole arbitration of the Director (Marketing) of the Indian Oil Corporation.

3. Therefore the learned Civil Judge, Junior Division, Chiplun, referred the dispute to the arbitrator. However, while passing that order, he also directed that till the award of the arbitrator, the defendant-company shall resume supplies of N.S & H.S.D. to the plaintiff. The defendant has filed this petition challenging the said order only on the ground that when the matter was referred to the arbitrator in view of the arbitration clause, the Civil Court had no authority to pass such interim order and, therefore, that part of the order is liable to be set aside.

4. The learned Counsel for the plaintiff-respondent points out that Advocate for the defendant-Corporation had submitted written arguments before the trial Court and in that arguments he had stated that "the Hon’ble Court may pass the necessary order about resumption of

supply of the products". In view of this concession given by the Advocate for the defendant, the Civil Court had passed the impugned order and, therefore, no fault can be found with the impugned order.

5. Admittedly, in view of the arbitration clause in the agreement, the dispute should have been referred to the arbitrator and that was done by the learned Civil Judge, Junior Division after this point was raised on behalf of the defendant. Having referred the matter to arbitration, the Civil Judge did not have any jurisdiction to pass an interim order. Interim order may be passed in the nature of interim injunction or such other interim protection as may appear just and convenient to the Court under Section 9(b) and (e) of the Arbitration & Conciliation Act, 1996 (for short, "the said Act"). The word "Court" as defined in Section 2(1)(e) of the said Act means the principal Civil Court of original jurisdiction in a district which means the District Court. Thus the District Court has jurisdiction to pass the interim order under Section 9. Civil Judge, Junior Division is not the District Court and, therefore, he does not get such a jurisdiction. It appears that the learned Civil Judge passed the impugned order for resumption of supply of products wrongly without any jurisdiction, but this mistake was committed in view of the concession given by the Advocate for the

defendant-company. Anyhow, taking into consideration the legal position, the impugned order has to be set aside. The plaintiff may take recourse to Section 9 of the said Act and move an appropriate application before the District Court.

6. For the aforesaid reason, the impugned order directing the defendant-petitioner to resume the supply of products to the plaintiff-respondent is, therefore, set aside. However, as the supplies are already resumed in view of the said order, the supply shall be continued for a further period of two weeks. Meanwhile, the plaintiff-respondent shall be at liberty to move the appropriate Court for the appropriate remedy under Section 9 of the said Act.

Petition stands disposed of accordingly.

(J.H.BHATIA,J.)